

§ 16.80 Exemption of Office of Professional Responsibility System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g):

(1) Office of Professional Responsibility Record Index (JUSTICE/OPR–001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain information concerning the existence, nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsections (c)(4), (d), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal confidential informants and constitute unwarranted invasions of the personal privacy of third persons who provide information in connection with a particular investigation.

(3) From subsections (e)(1) and (5) because the collection of information during an investigation necessarily involves material pertaining to other persons or events which is appropriate in a thorough investigation, even though portions thereof are not ultimately connected to the person or event subject to the final action or recommendation of the Office of Professional Responsibility.

(4) From subsection (e)(2) because collecting the information from the subject would thwart the investigation by placing the subject on notice of the investigation.

(5) From subsections (e)(3) and (e)(8) because disclosure and notice would provide the subject with substantial information which could impede or compromise the investigation. For example, an investigatory subject occupying a supervisory position could, once made aware that a misconduct inves-

tigation was ongoing, put undue pressure on subordinates so as to preclude their cooperation with investigators.

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Freedom of Information/Privacy Act (FOI/PA) Records (JUSTICE/OPR–002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by OPR.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment

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of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

[Order No. 58-81, 46 FR 3509, Jan. 15, 1981, as amended by Order No. 159-99, 64 FR 17977, Apr. 13, 1999]

§ 16.81 Exemption of United States Attorneys Systems—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), and (g):

(1) Citizen Complaint Files (JUSTICE/USA-003).

(2) Civil Case Files (JUSTICE/USA-005).

(3) Consumer Complaints (JUSTICE/USA-006).

(4) Criminal Case Files (JUSTICE/USA-007).

(5) Kline-District of Columbia and Maryland-Stock and Land Fraud Interrelationship Filing System (JUSTICE/USA-009).

(6) Major Crimes Division Investigative Files (JUSTICE/USA-010).

(7) Prosecutor's Management Information System (PROMIS) (JUSTICE/USA-011).

(8) United States Attorney, District of Columbia Superior Court Division, Criminal Files (JUSTICE/USA-013).

(9) Pre-trial Diversion Program Files (JUSTICE/USA-014).

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to U.S.C. 552a(j)(2), (k)(1) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for these systems, would permit the subject of a criminal investigation and/or civil case or matter under investigation, litigation, regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these systems would inform the subject of criminal investigation and/or civil investigation, matter or case of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies.

(4) From subsection (e)(1) because in the course of criminal investigations and/or civil investigations, cases or matters, the U.S. Attorneys often obtain information concerning the violation of laws or civil obligations other than those relating to an active case or matter. In the interests of effective law enforcement and civil litigation, it is necessary that the U.S. Attorneys retain this information since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought within the U.S. Attorneys' offices.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection, apprehension or legal obligations and duties.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these systems of records